

ORDER BELOW EXH.31 IN
REGULAR CIVIL SUIT NO.158/2017
[Sahebrao Bhimarao Pawar Vs. Dhanaji Sattu Mandale etc.4]
(CNR-MHSN09-001089-2017)

This is an application for allowing the defendant No.1 and 4 to file their written statement, which could not be submitted within the time permitted and for setting aside 'No W.S.' order passed against them. According to the defendant No.1 and 4 they are the resident of Tasgaon and due to non-availability of the old documents and due to their illness, they unable to file their W.S. within stipulated period. Considering the nature of suit, their W.S. requires to be read and recorded for the just decision of the case. Hence, they prayed to allow their application.

2] The plaintiff by filing his say at the overleaf of the application itself denied the contents in the application. According to plaintiff, the reasons mentioned in the application are not sufficient and true. Defendants failed to produce the documents in support of the reasons stated in the application. Defendants were appeared on 13.10.2017 through their respective advocate and thereafter they have filed his application after 7 months delay. Hence plaintiff prayed to reject the application. Further he prayed that, if Hon'ble Court comes to the conclusion to allow the application heavy cost may be imposed on defendant no.1 and 4.

3] I have heard the Ld. Advocate for the plaintiff and defendant No.1 and 4. On perusal of record, it shows that, after service of suit summons, defendant No.1 and 4 appeared

on 13.10.2017 through his Ld. Advocate by filing Vakalatnama at Exh.17. But, the defendant No. 1 and 4 failed to file their written statement within time and hence, on 29.01.2018, No W.S. order has come to be passed against the defendant No.1 and 4. The present suit is filed for perpetual injunction, it is necessary for the defendant No.1 and 4 to file their written statement and contest the suit. The reasons stated in the application by the defendant for not filing their written statement within the time permitted appears to be proper and justifiable. The defendant No.4 has filed his affidavit at Exh.32 in support of the application. Therefore, considering the nature of the suit and in the interest of justice, defendant No.1 and 4 permitted to file their written statement. The delay caused by the defendant No.1 and 4 needs to be considered. In the result, the following order is passed :-

: ORDER :

- (1) Application at Exh.31 is allowed.
- (2) 'No W.S.' order passed against the defendant No.1 and 4 on 29.01.2018 is hereby set aside.
- (3) The defendant No.1 and 4 are allowed to present their written statement subject to payment of costs of Rs.500/- to the plaintiff, as a condition precedent.

Tasgaon
Dt.15.10.2018

Sd/-xxx
(Smt. S.S. Manjrekar)
Jt. Civil Judge, Junior Division,
Tasgaon